

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**REGIS KIRBY,
Respondent.**

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DOCKET NO. DI-08-41

MEMORANDUM AND ORDER

On November 7, 2008, the Department of Education (“Department”) filed a Notice of Charges against the Respondent, seeking an immediate suspension of his professional teaching certification¹ pursuant to section 2070.9.2(1) of the Professional Educator Discipline Act. Under section 2070.9.2(1), the Commission may direct the Department to suspend immediately the certificate of a professional educator indicted for a crime set forth in section 111(e)(1) through (3) of the Public School Code of 1949 if the Commission, or a committee thereof, determines that the professional educator poses a threat to the health, safety or welfare of a student or other individual in a school. 24 P.S. §1-111(e)(1) –(3).

Suspension may occur, however, only after the Respondent has received notice of the charges, including the Department’s request for immediate discipline, and has an opportunity to be heard at a hearing if so requested². 24 P.S. §2070.9.2(1); As contemplated under the Act, a committee of the Commission held a meeting on

1 The Respondent holds an Instructional II teaching certificate in the area of Art K-12 and in the area of Elementary K-6.

2 A responsive pleading and request for hearing must be filed within 15 days from receipt of service. If requested, a hearing must be held within 15 days from the request for hearing. 24 P.S. §2070.9.2(1).

December 22, 2008, to consider the Department's request for immediate suspension. Counsel for the Respondent and for the Department appeared at the meeting on behalf of their respective clients.

Based on the certified copy of the court record, the Department has established that the Respondent was charged in Allegheny County with two counts of Involuntary Deviate Sexual Intercourse (18 Pa.C.S. §3123(a)(1)(2)), one count of Corruption of Minors (18 Pa.C.S. §6301(a)(1)), one count of Terroristic Threats (18 Pa.C.S. §2706(a)(1)), one count of Indecent Assault (18 Pa.C.S. §3126(a)(1)), and three counts of Selling or Furnishing Alcohol to Minors (18 Pa.C.S. §6310.1(a)). The offenses of Involuntary Deviate Sexual Intercourse, Corruption of Minors and Indecent Assault are included within the crimes set forth in section 111(e)(1). 24 P.S. §1-111(e)(1).

The allegations underlying the charges are that the Respondent, who was employed as a high school art teacher with the Pittsburgh Public Schools, sexually assaulted a seventeen year-old male student, who was a guest at his home. The Department further alleges that the Respondent forcibly penetrated the victim and performed oral sex on the victim while the victim was under the influence of alcohol provided by the Respondent. The Respondent is alleged to have then threatened to kill the student if he divulged the assault.

From these facts, the Department argues that the Respondent clearly poses a threat to the health, safety or welfare of a student or other individual in a school and urges the Commission to exercise its discretion and suspend the Respondent's certification. The Department further asserts that the Commission, as well as the Department, has a duty to act to safeguard students when presented with allegations of

such predatory conduct underlying multiple charges of criminal offenses.

The Respondent does not dispute that he has been indicted for the specified crimes but contends that he is mounting a vigorous defense to the charges in the criminal proceeding. He argues that to suspend his certificates will damage his reputation unnecessarily. The Department counters that the loss of reputation flows from the indictment and not from any disciplinary action against his certification. The Respondent has also proffered an affidavit in which he agrees not to have any contact with minors during the pendency of his criminal proceeding. Under section 2070.9.2(1)(ii) of the Professional Educator Discipline Act, the Commission may elect not to suspend an educator's certificate if the educator attests that he or she will not be employed in a position that requires professional certification or involves direct contact with children. 24 P.S. §2070.9.2(1)(ii). The Department argues that given the seriousness of the allegations and pending criminal charges, an affidavit can not provide adequate assurance that the educator would not attempt to secure or secure employment in a school setting.

After consideration of the record and the arguments presented by both parties, the Commission³ finds that the Department has met its burden of establishing that the Respondent was indicted for crimes set forth in section 111(e) of the Public School Code of 1949. 24 P.S. §1-111(e). In determining whether the Respondent poses a threat as contemplated in section 2070.9.2(1), the Commission must weigh the public

3 As provided under the Act, the Commission as a whole can consider a request for an immediate suspension or may delegate its authority to a committee of the Commission members. In this case, a committee heard and decided the case but for convenience sake the committee will be referred to as the "Commission" herein.

interest in maintaining the safety and security of the students and others in the schools of the Commonwealth against the educator's interest in maintaining his certification. Given the seriousness and predatory nature of the allegations and the resultant criminal charges lodged against the Respondent, the Commission finds that the interest in protecting students in our schools outweighs the educator's interest in maintaining his certificate *during the pendency of the criminal proceeding*. The Commission's finding is influenced by the fact that should the Respondent be acquitted, his professional certification will be immediately reinstated⁴.

The Commission holds that the Department has presented sufficient evidence to support its claim that the Respondent poses a threat to the health, safety or welfare of a student or other individual in a school. The burden then shifts to the Respondent to rebut the evidence presented by the Department that he was indicted for the particular crimes or that he poses the requisite threat. While the Commission recognizes that in some cases an affidavit attesting to the educator's willingness to forgo direct contact with children will obviate the need for a suspension, the allegations and pending criminal charges in this case are too egregious for the Commission to risk the safety of students on the mere attestation of the educator.

Accordingly, the Commission finds that Respondent's professional certification should be suspended immediately pursuant to 24 P.S. §2070.9.2(1) and we enter the following:

⁴ If the Respondent is found guilty of any the offenses set forth in section 111(e)(1) – (3), the Professional Educator Discipline Act mandates revocation of his certification. 24 P.S. §2070.9.2(2); 24 P.S. §1-111(e).

ORDER

AND NOW, this ___16th___ day of January, 2009, upon consideration of the Notice of Charges, requesting immediate suspension, filed by the Department of Education, it is hereby ORDERED that the professional certification issued to Respondent Regis Kirby shall be SUSPENDED IMMEDIATELY pursuant to 24 P.S. §2070.9.2(1).

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY:

Gilbert R. Griffiths
Chairperson

ATTEST:

Carolyn Angelo
Executive Director

Date Mailed: